

DECISION



24829
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-209431

DATE: April 13, 1983

MATTER OF: Biological Monitoring, Inc.

DIGEST:

1. Protest against contracting agency's affirmative responsibility determination will not be considered since GAO no longer reviews a contracting agency's affirmative responsibility determinations except for reasons not present here.
2. Whether the awardee fulfills its contractual obligations is a matter for the contracting agency in the administration of the contract.
3. GAO will not question the contracting agency's evaluation of the awardee's proposal since it had a reasonable basis.

Biological Monitoring, Inc. (BMI), protests the award of a contract to Battelle Columbus Laboratories (Battelle) under request for proposals (RFP) No. DAAA03-82-R-0037, issued by the Department of the Army, Pine Bluff Arsenal (PBA), Arkansas.

We deny the protest.

The RFP solicited proposals for continuous biomonitoring operations and an ecological survey for a period of 1 year. Three offers were received, but only BMI and Battelle were found to be in the competitive range. After negotiations and a request for best and final offers, Battelle offered a price of \$78,459, compared to BMI's price of \$99,988. The award was then made to Battelle.

PBA produces a variety of munitions and chemical weapons. One of PBA's major concerns is performing its mission in a manner which will protect the environment. Thus, PBA has recognized the need for environmental surveillance activities in order to insure that it is complying with State and Federal environmental standards. The continuous biomonitoring operations requested under the RFP are a system which will monitor a group of test fish to learn how the fish react to the different levels of waste products

which PBA puts into the water around its installation. From this monitoring, PBA will learn what long term effects they have and what steps it should take to safeguard the environment. Under the RFP, the contractor is required to refine, automate and test a biomonitoring system which Battelle helped PBA develop under earlier contracts.

In effect, BMI argues that it is the only firm presently qualified to perform this job. According to BMI, it helped develop a similar system, the only such system currently operating on-line in the United Ammunition Plant, Radford, Virginia. BMI maintains that for PBA to get a similar system on-line without BMI would require the Army to pay for a second research and development program. In BMI's opinion, this would be a waste of the Government's money.

In addition, BMI questions Battelle's ability to perform the contract within the time provided. According to BMI, its investigation reveals that Battelle does not presently have the expertise to do the job without first conducting extensive research and development. Moreover, BMI argues that Battelle's proposal does not meet the RFP's technical specifications. Specifically, BMI does not believe that Battelle has shown that it can computerize the system as required. According to BMI, it has tried to learn under the Freedom of Information Act (FOIA) what computer Battelle intends to use, but the Army has refused to disclose this information. In BMI's opinion, only its computer system (developed for the Radford project) is capable of acquiring sufficient data bases fast enough. Thus, BMI believes that the Army will end up paying to develop the same computer system a second time. BMI also states that its bioamplifiers, which took 2 years to develop at Army expense, are superior to Battelle's largely untested amplifiers.

In rebuttal, the Army points out that the research and development effort BMI refers to took place at the Virginia Polytechnic Institute and State University and the results were published and made a part of the public domain. No patent rights were involved, and the Army intended these results to be used in meeting the requirements under the present solicitation. The Army then finds that, contrary to BMI's belief, the protester does not have a monopoly on the technology in question.

As to Battelle's specific ability to perform the contract, the Army argues that BMI appears to be questioning the Army's affirmative determination that Battelle is a responsible offeror, a matter which our Office generally

does not review. If, on the other hand, BMI is arguing that Battelle will not meet its contractual obligations, the Army maintains that this is a matter of contract administration--once again, an area which our Office does not review.

Our Office no longer reviews a contracting agency's affirmative determination of responsibility unless fraud is shown on the part of the procuring agency or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Nedlong Company, B-204557, September 21, 1981, 81-2 CPD 235. Neither of these exceptions is present here. Therefore, insofar as BMI's protest is directed against the Army's determination that Battelle is a responsible offeror capable of performing the contract in accordance with all its terms and conditions, we will not review the matter.

We have also held that whether the awardee fulfills its obligations under the contract is not for our review, but involves a matter for the contracting agency in the administration of the contract. Impact Instrumentation, Inc., B-198704, July 28, 1980, 80-2 CPD 75. Thus, if BMI means to argue that Battelle will not or cannot fulfill its contractual obligations, we will not consider the matter. It is the Army's responsibility to insure that the contract is properly performed.

In its correspondence with our Office, BMI has indicated that, at this point in time, it possesses a unique ability to provide PBA with the biomonitoring system it needs. It bases this assertion on the research and development work it did for the Army as well as the system it installed at the Radford Ammunition Plant. Conversely, BMI believes that, at the present time, Battelle does not have the expertise to perform the contract and will only acquire this expertise after a long and expensive period of research and development. Thus, it appears that the heart of BMI's protest is a criticism of the Army's technical evaluation. In BMI's opinion, it should have received the award based on its clear technical superiority.

We have held that it is not the function of our Office to evaluate proposals to determine which should have been selected for award. The determination of the relative merits of proposals is the responsibility of the procuring agency since it must bear the burden of any difficulties incurred by reason of a defective evaluation. In light of this, procuring officials enjoy a reasonable degree of discretion and such discretion will not be disturbed unless shown to be arbitrary or in violation of the procurement

statutes and regulations. Our Office therefore will not substitute its judgment for that of the procuring agency by making an independent determination. Pacific Consultants, Inc., B-198706, August 18, 1980, 80-2 CPD 129. We will only review the Army's evaluation to determine whether it had a reasonable basis. Peter J. T. Nelsen, B-194728, October 29, 1979, 79-2 CPD 302.

The Army has informed us that the results of the research and development effort it funded are available to any firm. Thus, it appears that BMI's only advantage over Battelle in this area is its direct participation in the research and development program. The Army, however, apparently did not consider this a significant factor during its evaluation of the two proposals. In our opinion, such a determination is clearly within the discretion of the contracting agency and not for our review.

According to the Army, Battelle's proposal was selected as the most technically qualified for the following reasons:

- (1) detailed technical response to the request;
- (2) responsive to the total scope;
- (3) utilization of existing equipment;
- (4) demonstrated an innovative approach to measuring fish ventilation which reduces data collection; and
- (5) computer equipment selection.

As noted above, BMI questions Battelle's technical quality, particularly in regards to its computer and bio-amplifiers. However, we have held that a protester's disagreement with the contracting agency over the relative merits of specific aspects of a competitor's proposal is not sufficient to prove that the agency's evaluation of that proposal is unreasonable. Photonics Technology, Inc., B-200482, April 15, 1981, 81-1 CPD 288. In our opinion, then, the Army has demonstrated that it had a reasonable basis in evaluating Battelle's proposal as it did. Consequently, we have no grounds for questioning the Army's determination that Battelle's proposal was technically superior to BMI's. Pacific Consultants, Inc., supra.

Protest denied.

for Milton J. Fowler
Comptroller General
of the United States